IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2737 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMBALAL M JAYSWAL

Versus

STATE OF GUJARAT AND OTHERS

Appearance:

MR BIPIN P JASANI for Petitioner

MR KT DAVE, A.G.P. for Respondent No. 1, 3, 4

MR PARESH UPADHYAY for Respondent No. 2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 27/04/2001

ORAL JUDGEMENT

The petitioner retired from service on 31st March, 1985. He was duly paid pension from 01/4/1985 to 30th April, 1987. Thereafter, as the payment of pension was stopped, the present petition was filed seeking following reliefs :

"20. The petitioner, therefore, prays that :

(A) Your Lordships be pleased to issue an appropriate writ, order or direction quashing and setting aside the impugned action of the Respondent for not releasing the pension and other post-retirement benefits inclusive the amount of gratuity as being arbitrary, discriminatory, illegal, unjustified and violative of the Articles-14 and 16 of the Constitution of India and against the principles of natural justice;

(B) Your Lordships be pleased to direct the Respondents to release the arrears of pension with effect from 1.5.1987 and to pay the outstanding amount of pension and gratuity forthwith and to go on paying the same monthly regularly without any hindrance with interest at market-rate and exemplary and with compensatory costs;"

2. On 22nd April, 1988 the following order was passed by this Court (Coram : S.B.Majmudar, J) (as he then was) :

" Rule to be heard along with Spl. C.A.2109/88.

By way of interim relief it is directed that the respondent No.3 shall fix the pension of the petitioner and the said fixation shall be finalised within 2 weeks from the date of receipt of this order by respondent No.3. After fixation of said pension the amount of pension payable to the petitioner shall be forthwith released to the petitioner and shall be regularly paid to the petitioner month by month and all the arrears should also be calculated and paid to the petitioner within four weeks of the ascertaining of amount of pension. So far as the gratuity is concerned the respondent No.3 is directed to pay to the petitioner the gratuity amount of Rs.8,350/-. As stated in the affidavit in reply of respondent No.2(para 8) that the amount of gratuity was already sanctioned by the Accountant General. I

am told by the learned counsel for respondent No.2 that the said amount will be paid to the petitioner as soon as possible. In my view the respondent No.2 is required to be directed to release that gratuity amount to the petitioner within 15 days from today. The aforesaid direction will be by way of interim relief. Copy of this order shall be sent to the respondents No.2 & 3 forthwith for information and necessary action. Liberty reserved to both the sides to apply in case of difficulty. Direct service permitted."

3. In view of the clear directions given by this Court no grievance would survive. However, Mr.Jasani appearing on behalf of the petitioner submitted that the pension amount being paid to the petitioner is till date an adhoc amount.

4. The respondents, especially Respondent No.3 must have by now fixed the pension of the petitioner. However, in case the same is not done, the same shall be fixed immediately within a period of two weeks from the date of receipt of writ of this Court or a certified copy of this order, which ever is earlier.

5. Mr.Jasani further made a grievance that the pension has not been revised in light of the 5th pay Commission. The said issue is not subject of this petition. However, the respondents while fixing the pension of the petitioner shall take into consideration all the entitlements available to the petitioner under the law and fix the pension accordingly. In so far as gratuity is concerned, the same has already been paid to the petitioner and hence no grievance in relation to the same would not survive.

This petitioner is, therefore, allowed to the aforesaid extent. Rule made absolute with no order as to costs. Liberty reserved to apply in case of difficulty.

(D.A.Mehta, J)
'Bhavesh'